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IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

STATE OF ILLINOIS,

Petitioner,

v.

GREGORY TURNER,

Respondent.

On Petition for a Writ of Certiorari to the Appellate Court of Illinois, First Judicial District

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the exclusionary rule requires that a voluntary confession be suppressed when the suspect was confronted during questioning with evidence seized as a result of an illegal search, even though a confession is not a product of an illegal search and the exclusionary rule can have no real deterrent effect on police misconduct under those circumstances.

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On Petition for a Writ of Certiorari to the Appellate Court of Illinois, First Judicial District

PETITION FOR A WRIT OF CERTIORARI

Petitioner, the State of Illinois, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Appellate Court of Illinois, First Judicial District, in this matter.

OPINIONS BELOW

The opinion of the Appellate Court of Illinois, First District, Sixth Division, reversing respondent's conviction for first degree murder, is reported as *People v. Turner*, 259 Ill. App. 3d 979, 197 Ill. Dec. 777, 631 N.E. 2d 1236 (1st Dist. 1994) and is reproduced as Appendix A to this petition. The order of the Illinois Supreme Court denying leave to appeal in this matter is reproduced as Appendix B to this petition.

JURISDICTION

The decision of the Appellate Court of Illinois in this matter was entered on March 18, 1994. A timely petition for leave to appeal to the Illinois Supreme Court was filed by petitioner and was denied by the Illinois Supreme Court on October 6, 1994. This Court's jurisdiction is invoked under 28 U.S.C. sec. 1257(3).

CONSTITUTIONAL PROVISION INVOLVED

FOURTH AMENDMENT: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . .

STATEMENT OF THE CASE

Respondent Gregory Turner confessed to stabbing sixteen year old Shirley Taylor to death. During questioning by the police, respondent had been confronted with a pair of bloody shoes found near his bed. The trial judge suppressed evidence of the shoes as the product of an illegal search, but ruled that respondent's confession was voluntary and admissible. Respondent was convicted of first degree murder at a bench trial. The Appellate Court of Illinois reversed respondent's murder conviction, ruling that under the exclusionary rule respondent's confession had to be suppressed because respondent was confronted with illegally seized evidence during questioning. *People v. Turner*, 259 Ill. App. 3d 979, 631 N.E. 2d 1236 (1st Dist. 1994).

Evidence in the Trial Court

On June 9, 1988 the body of high school student Shirley Taylor was found in an alley on the south side of Chicago.

(Tr. 101) She had been stabbed twice in the chest and swabs from her vagina and anus tested positive for semen. (Tr. 415-22)

The Chicago police wanted to talk to respondent, who was a 27 year old parolee, because a friend of the victim had said that Shirley had been afraid of respondent. (Tr. 138) An officer reached respondent on the phone and respondent agreed to come into the station. (Tr. 154) After respondent came into the station on his own, the police talked to him in an interview room and respondent gave the officers an alibi. (Tr. 109, 365-66)

Two detectives then left the station to check out the alibi and, after talking to two of respondent's relatives, found that the alibi was false. (Tr. 110-11) Then the detectives went to respondent's home and talked to his parents. According to the findings of the trial judge, the detectives told respondent's mother that respondent was cooperating in the investigation and that respondent had said that it was okay to search his room. (R. C150)

With the permission of respondent's mother the detectives searched the area in the basement where respondent slept and found a pair of shoes with blood on the soles. (Tr. 114) The detectives asked respondent's mother if they could take the shoes and she said yes. (Tr. 114)

Later a different detective questioned respondent again in the interview room and respondent was told that his alibi did not check out and that bloody shoes had been found by his bed. (Tr. 157, 381) Respondent then confessed that he had killed Shirley Taylor. (Tr. 161-63, 383) He later gave a written confession to a court reporter and an assistant state's attorney. (Tr. 393-94)

In the confession respondent said that on the night of the murder he had sex with Shirley Taylor in his bed in

the basement of his home. (Tr. 396) Afterwards, he left the basement with the victim because she was loudly demanding $30.00 from him. Respondent said that he stabbed the victim because she had threatened to claim that he had raped her, and he was afraid of a rape accusation because he was on parole. (Tr. 397-98)

Trial Court Proceedings

The trial judge suppressed evidence of the bloody shoes found by respondent's bed, finding that the police had told falsehoods to respondent's mother in order to get consent to search. (R. C155) However, the trial judge allowed respondent's confession to go into evidence, ruling that respondent had not been under arrest when he confessed. (R. C153-C154) Also, the judge ruled that the confession had not been caused by the fact that respondent had been confronted with the bloody shoes, since respondent had also been confronted with the fact that his alibi was false. (R. C156-C158)

At trial the theory of the prosecution was that respondent had raped Shirley Taylor and then had killed her when she threatened to tell her mother. (Tr. 421-22) However, the trial judge acquitted respondent of aggravated criminal sexual assault. (Tr. 423-24) But the judge found respondent guilty of first degree murder and respondent was later sentenced to 30 years in custody. (Tr. 447) That conviction was reversed on appeal on the grounds that respondent's confession should have been suppressed under the exclusionary rule since respondent was confronted with illegally seized evidence during questioning. *People v. Turner*, 259 Ill. App. 3d 979, 631 N.E. 2d 236 (1st Dist. 1994).

REASONS FOR GRANTING THE WRIT

THE EXCLUSIONARY RULE DOES NOT REQUIRE THAT A VOLUNTARY CONFESSION BE SUPPRESSED WHEN THE SUSPECT WAS CONFRONTED WITH ILLEGALLY SEIZED EVIDENCE DURING QUESTIONING, SINCE A CONFESSION IS NOT THE PRODUCT OF AN ILLEGAL SEARCH AND BECAUSE THE EXCLUSIONARY RULE CAN HAVE NO REAL DETERRENT EFFECT ON POLICE MISCONDUCT UNDER THOSE CIRCUMSTANCES.

The exclusionary rule is not part of the Fourth Amendment, but is a device created by judges to deter the police from illegally seizing evidence. *Illinois v. Krull*, 480 U.S. 340, 107 S. Ct. 1160, 94 L. Ed. 2d 364 (1987). Therefore the exclusionary rule does not apply to types of cases in which it will not significantly deter police misconduct. *New York v. Harris*, 495 U.S. 14, 110 S. Ct. 1640, 109 L. Ed. 2d 13 (1990); *United States v. Leon*, 469 U.S. 897, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984). This is just such a case. Here respondent Gregory Turner confessed to murder when he was confronted with illegally seized evidence, but the police had no way of knowing in advance that their search would eventually produce an incriminating statement. Seldom if ever will officers anticipate that an illegal search will later lead to a confession. Therefore a voluntary confession should be admissible even when the suspect is confronted with illegally seized evidence during questioning, because the exclusionary rule can have no real deterrent effect on police misconduct under those circumstances.

Certiorari should be granted here to apply this important rule of law. More exactly, certiorari should be granted for the following reasons:

1. The precise question presented by this case (whether a voluntary confession must be suppressed because the suspect was confronted with illegally seized evidence) is an important one which has not been decided by this Court.
2. Nevertheless, the lower court's extension of the exclusionary rule in this case conflicts with a number of decisions of this Court, particularly *New York v. Harris*, 495 U.S. 14, 110 S. Ct. 1640, 109 L. Ed. 2d 13 (1990).
3. There is a conflict of authority among state courts which have considered this issue.

This case illustrates the costs of applying the exclusionary rule when it can have no real effect in deterring violations of the Fourth Amendment.

A.

Certiorari Should Be Granted Because This Case Involves An Important Issue Concerning The Admissibility Of Confessions Which Has Not Been Decided By This Court.

This Court has not decided whether a voluntary confession must be suppressed when the suspect was confronted with illegally seized evidence during questioning. Nevertheless, this is an important legal issue which the defense may attempt to raise in many criminal cases in which a suspect has confessed to a crime. Therefore certiorari should be granted to settle an important constitutional issue about the scope of the exclusionary rule which has not yet been decided by this Court. U.S. Sup. Ct. Rule 10.1(c).

Here respondent's confession to the murder of Shirley Taylor was found to be voluntary and admissible by the trial judge. However, the Appellate Court ruled that the confession had to be suppressed because respondent had

been told during questioning that shoes with blood on them had been found near his bed. *People v. Turner*, 259 Ill. App. 3d 979, 631 N.E. 2d 1236 (1st Dist. 1994). Those shoes had been seized by the police with the consent of respondent's mother, but the trial court found that this consent had been obtained through deceit. The ruling by the Appellate Court of Illinois should be reversed, because it extends the exclusionary rule to a situation when it should not and does not apply.

The exclusionary rule applies to a type of evidence if and only if suppression of such evidence will deter illegal searches and seizures. *New York v. Harris*, 495 U.S. 14, 110 S. Ct. 1640, 109 L. Ed. 2d 13 (1990); *Illinois v. Krull*, 480 U.S. 340, 107 S. Ct. 1160, 94 L. Ed. 2d 364 (1987). Therefore the exclusionary rule does not apply here. A confession is not evidence found during an illegal search and in almost all cases the police will have no idea at the time of a search that they will find evidence which will later lead to a confession. Ordinarily the police will not be able to predict in advance what they will find during a search and they certainly will not be able to predict what effect the evidence would have if mentioned during interrogation of a suspect. Accordingly, there will be no deterrent effect in suppressing a confession because the suspect was confronted with illegally seized evidence during questioning. In almost every case the police will have no idea that a search will produce evidence which will later lead to a confession, so there will be no deterrent effect in suppressing such confessions.

Instead, the way to deter illegal searches and seizures is to suppress the evidence found during those searches, as was done here. The trial judge suppressed evidence of the bloody shoes found by respondent's bed, and petitioner has not challenged that ruling on review. But it

makes no sense to suppress a voluntary confession just because the suspect was told about illegally seized evidence before he confessed. A confession is not evidence found during an illegal search nor is it a predictable result of such a search, so there is no real deterrent effect on police misconduct in suppressing such a confession.

Thirty years ago this Court did come close to deciding whether a confession must be suppressed if the suspect was confronted with illegally seized evidence during questioning. *Fahy v. Connecticut*, 375 U.S. 85, 84 S. Ct. 229, 11 L. Ed. 2d 171 (1963). However, the record in *Fahy* did not show whether the suspect had been confronted with the evidence before his initial confession, so the most this Court said was that such an inquiry would be appropriate on remand. Moreover, the language in *Fahy* concerning the scope of the exclusionary rule is obsolete, since this Court has since held that the exclusionary rule does not apply when it cannot significantly deter police misconduct. See, *e.g.*, *Illinois v. Krull*, 480 U.S. 340, 107 S. Ct. 1160, 94 L. Ed. 2d 364 (1987); *United States v. Leon*, 469 U.S. 897, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984); *United States v. Calandra*, 414 U.S. 338, 94 S. Ct. 613, 38 L. Ed. 2d 561 (1974).

Therefore certiorari should be granted to resolve an important issue which has not previously been decided by this Court. Usually a suspect who confesses to a crime will have been confronted by the police during questioning with the evidence incriminating him. Defense attorneys can always claim before trial that such evidence was illegally seized and, even if few such claims will succeed, such claims certainly will delay trials and consume scarce court time. Thus this Court should hold that a voluntary confession is not made inadmissible by the exclusionary rule even if the suspect was confronted with illegally seized evidence during questioning.

B.

The Extension Of The Exclusionary Rule By The Appellate Court Of Illinois Conflicts With A Number Of Decisions Of This Court.

This Court has clearly and repeatedly held that the exclusionary rule is not part of the Fourth Amendment, but is a remedial device designed to exclude evidence only when exclusion would have the effect of deterring illegal searches and seizures. *New York v. Harris*, 495 U.S. 14, 110 S. Ct. 1640, 109 L. Ed. 2d 13 (1990); *Illinois v. Krull*, 480 U.S. 340, 107 S. Ct. 1160, 94 L. Ed. 2d 364 (1987); *United States v. Leon*, 469 U.S. 897, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984); *Stone v. Powell*, 428 U.S. 465, 96 S. Ct. 3037, 49 L. Ed. 2d 1067 (1976); *United States v. Calandra*, 414 U.S. 338, 94 S. Ct. 613, 38 L. Ed. 2d 561 (1974). In this case the Appellate Court of Illinois extended the exclusionary rule to apply to a situation where it could have no real deterrent effect. Therefore certiorari should be granted because the lower court ruling conflicts with a number of decisions by this Court.

In particular, the Appellate Court's opinion conflicts with this Court's 1990 *Harris* decision, which held that a confession was admissible although the suspect had been unlawfully arrested in his home without a warrant. *New York v. Harris*, 495 U.S. 14, 110 S. Ct. 1640, 109 L. Ed. 2d 13 (1990). *Harris* held that the exclusionary rule does not require that a confession be suppressed in either of the following two situations:

1. When the confession is not the product of the violation of the Fourth Amendment; or
2. When the exclusionary rule would not deter police misconduct.

Both holdings indicate that respondent's confession should have been ruled admissible. Respondent's confession was

not the product of the alleged violation of the Fourth Amendment by the police, nor could the exclusionary rule have any significant deterrent effect under the circumstances of this case.

Here respondent confessed to murder after the police told him that his alibi did not check out and that bloody shoes had been found near his bed. Those shoes had been found and taken by the police with the consent of respondent's mother. Although evidence on the point was conflicting, the trial judge found that the bloody shoes had been seized illegally because the police had given false information to respondent's mother in order to get her consent to search. (R. C154-C155) However, under this Court's reasoning in *Harris*, respondent's confession cannot be considered the product of the Fourth Amendment violation in this case. In *Harris* this Court held that the suspect's confession was not the product of the Fourth Amendment violation, since that violation consisted of arresting the suspect in his apartment without a warrant and the interrogation of that suspect was lawful. Similarly, here the Fourth Amendment violation consisted of a seizure from respondent's home when he was not present, and there was nothing unconstitutional about the interrogation of respondent. In this case the Fourth Amendment protected respondent's house and its contents, but did not bar interrogation of respondent in an effort to get a voluntary confession. Therefore, as in *Harris*, the confession was not the product of the Fourth Amendment violation, so respondent's voluntary confession to murder was admissible.

Also, the exclusionary rule does not apply to respondent's confession because under the circumstances of this case that rule can have no significant effect in deterring police misconduct. When officers search for evidence, they

will not know in advance if they will find evidence which will later lead a suspect to confess. Ordinarily the officers will not know what, if anything they will find during the search. Usually they will not even have a suspect in custody when the search is performed. And almost never will the officers have any way of knowing whether the evidence, if any, found during their search will play a role in leading a suspect to confess. Since the police will not know or expect that an illegal search will produce evidence which will later lead to a confession, the threat of suppressing such confessions cannot deter illegal searches. The exclusionary rule does not apply when it can have no significant deterrent effect. *Illinois v. Krull*, 480 U.S. 340, 107 S. Ct. 1160, 94 L. Ed. 2d 364 (1987). Therefore, the exclusionary rule does not require that a voluntary confession be suppressed, even when the suspect was confronted by illegally seized evidence during questioning.

This is particularly true since the direct and simple way to deter illegal searches is to suppress the evidence seized during them. That is what was done in respondent's case. The trial judge suppressed evidence of the bloody shoes found near respondent's bed, and that evidence was not used at respondent's trial. The State, while it argued in the trial court that the seizure of the shoes was lawful, did not challenge on appeal the suppression of that evidence. There is no need to suppress voluntary confessions which are not the product of illegal searches, when illegal searches may be more effectively deterred by suppressing evidence discovered during them.

To summarize, for two separate reasons described in this Court's *Harris* opinion the exclusionary rule does not require that a voluntary confession be suppressed when the suspect is confronted with illegally seized evidence during questioning. First, a voluntary confession cannot

be considered the product of an unlawful entry into a building, so the exclusionary rule does not apply. Second, under those circumstances the exclusionary rule can have no real deterrent effect, since the police will not know at the time of a search whether they will find evidence which will later induce a confession. Therefore under the Fourth Amendment use of respondent's voluntary confession at his murder trial was lawful.

Attenuation Analysis

Petitioner's main argument for a grant of certiorari is *not* based on the doctrine of attenuation, which provides that a confession may be admissible even following an illegal arrest if the confession is not directly caused by the Fourth Amendment violation. *Rawlings v. Kentucky*, 448 U.S. 98, 100 S. Ct. 2556, 65 L. Ed. 2d 633 (1980); *Brown v. Illinois*, 422 U.S. 590, 95 S. Ct. 2254, 45 L. Ed. 2d 416 (1975). Attenuation provides only an alternative reason for review by this Court. As this Court held in *Harris*, when the exclusionary rule does not apply then there is no need to engage in an attenuation analysis. *New York v. Harris*, 495 U.S. 15, 19, 110 S. Ct. 1640, 1643, 109 L. Ed. 2d 13, 21 (1990). Only when the exclusionary rule applies is there any reason to consider whether intervening circumstances have "purged the taint" of a Fourth Amendment violation. Here the exclusionary rule does not apply to respondent's confession, so it is unnecessary to determine whether the connection between the search and the confession was direct or attenuated.

Brown and other confession cases applying an attenuation analysis involved illegal arrests leading to confessions. See *Dunaway v. New York*, 442 U.S. 200, 99 S. Ct. 2248, 60 L. Ed. 2d 2248 (1979); *Brown v. Illinois*, 422 U.S. 590, 95 S. Ct. 2254, 45 L. Ed. 2d 416 (1975). That is not what

happened here, since the trial judge found that petitioner was not under arrest when he confessed. It is logical to say that a confession may be the product of an illegal arrest, but it makes much less sense to say that a confession is the product of an illegal search which produced only physical evidence. Also, suppressing confessions may be a way to deter illegal arrests, but suppressing confessions will not significantly deter illegal searches of property.

However, assuming for the sake of argument that the doctrine of attenuation did apply here, then the opinion of the Appellate Court of Illinois failed to follow this Court's decisions. The Appellate Court held that a confession must be suppressed when illegally seized evidence "may" have been a factor in the decision to confess. *People v. Turner*, 259 Ill. App. 3d 979, 991, 631 N.E. 2d 1236, 1244 (1st Dist. 1994) (See Appendix A, p. A-18). However, this Court has said that when there are intervening circumstances attenuating a Fourth Amendment violation then a voluntary confession is admissible. *Rawlings v. Kentucky*, 448 U.S. 98, 100 S. Ct. 2556, 65 L. Ed. 2d 633 (1980); *United States v. Ceccolini*, 435 U.S. 268, 98 S. Ct. 1054, 55 L. Ed. 2d 268 (1978). In respondent's case there was such a circumstance, since the detectives also told him that they had checked out his alibi and knew it was false. The Appellate Court of Illinois held that when a suspect is confronted with illegally seized evidence during questioning, then the confession must necessarily be suppressed even if the suspect was also confronted with incriminating evidence that had been lawfully discovered. That holding is contrary to this Court's Fourth Amendment decisions and provides another reason to reverse the Appellate Court's decision.

Summary

During a search of respondent's house the detectives found incriminating evidence, but they certainly did not find respondent's confession there. Accordingly that confession was not the product of the Fourth Amendment violation in this case, so the exclusionary rule did not apply to that confession. Also, the exclusionary rule does not apply because it will have no real deterrent effect on police misconduct under circumstances similar to this case. Certiorari should be granted in order to define the scope of the exclusionary rule and to correct the lower court's failure to follow this Court's decisions.

C.

Certiorari Should Be Granted To Resolve A Conflict Among State Court Decisions On Whether A Confession Must Be Suppressed If The Suspect Has Been Confronted With Illegally Seized Evidence During Questioning.

Another reason why this Court should grant certiorari is that state reviewing courts are divided on the question of whether a voluntary confession must be suppressed where it follows an unlawful search. Several courts have held that a voluntary confession should not be suppressed although it came after an illegal search and seizure. See, *e.g.*, *State v. Manns*, 220 Neb. 426, 370 N.W. 2d 157, 160-61 (1985) (the defendant's confession was not the fruit of an illegal search during which stolen property was recovered where the defendant received *Miranda* warnings and where the defendant's confession was voluntary); *Mays v. State*, 469 N.E. 2d 1161, 1164-65 (Ind. 1984) (although the defendant was confronted with illegally obtained evidence prior to confessing, his confession was admissible where the unlawful evidence was not so psychologically coercive as to have caused the defendant to confess against his free will); *People v. Pierce*, 88 Ill. App.

3d 1095, 411 N.E. 2d 295, 307 (5th Dist. 1980) (any taint from the unlawful search conducted without a valid warrant was removed from the defendant's confession where the defendant was given *Miranda* warnings and his confession was voluntary); and *State v. Rocheleau*, 131 Vt. 563, 313 A. 2d 33, 38-40 (1973) (even though the initial search was illegal, the subsequent confession was properly admitted where it was voluntary).

On the other hand, a number of courts have utilized an analysis similar to the approach employed by the Appellate Court of Illinois in this case. For example, in *State v. Pau'u*, 824 P. 2d 833, 835-37 (Hawaii 1992), the court held that even though the defendant's confession was voluntary in that the defendant understood his right to remain silent and was not coerced into waiving that right, the confession was still inadmissible where it was induced by a prior illegal search. Other relevant cases include *Hart v. Commonwealth*, 269 S.E. 2d 806, 809-10 (Va. 1980) (despite the voluntariness of a confession, it should have been excluded where there was an uninterrupted causal connection between the unlawful seizure of evidence and the confession); *People v. Hines*, 575 P. 2d 414, 416 (Colo. 1978) (confession which followed an unlawful search was inadmissible under the "fruit of the poisonous tree" doctrine where recitation of *Miranda* warnings was insufficient to dissipate the taint of the illegality); and *State v. Verhagen*, 86 Wis. 2d 262, 272 N.W. 2d 105, 109 (1978) (although the confession was voluntary, the confession should have been suppressed where it was an exploitation of a prior illegal search).

A conflict exists among state courts and a decision by this Court would provide much needed guidance on this issue. This Court has never decided a case in which a defendant sought to suppress a confession and the record showed that the defendant had been confronted with il-

legally seized evidence before he confessed. Lafave and Israel, *Criminal Procedure*, sec. 9.4(a), p. 747 (1984). Nothing is more common than for a suspect to confess after the police have confronted that suspect with the evidence against him. Defense attorneys, prosecutors and trial judges would benefit from knowing whether a defendant may seek to have his confession suppressed on the theory that the evidence used during questioning was illegally seized. Certiorari should be granted to decide this important and unresolved issue.

CONCLUSION

Petitioner, the State of Illinois, respectfully requests that a writ of certiorari issue to review the decision of the Appellate Court of Illinois, First Judicial District.

Respectfully submitted,

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